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SENATE BILL 43

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Sue Wilson Beffort

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO LIQUOR EXCISE TAX; ADJUSTING THE DEFINITION OF "SMALL WINER OR WINEGROWER"; CLARIFYING TAXATION ON CERTAIN WINE TRANSFERS; PROVIDING FOR PAYMENT OF TAX BY A WHOLESALER WHEN A WHOLESALER DISTRIBUTES WINE PRODUCED BY A NEW MEXICO WINERY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, [and] aromatic bitters or any similar [alcoholic] beverage, including blended or fermented beverages, dilutions or mixtures

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1 of one or more of the foregoing containing more than one-half  
2 of one percent alcohol by volume, but [~~excluding~~] "alcoholic  
3 beverages" does not include medicinal bitters;

4 [~~(1)~~] "~~spirituous liquors~~" means ~~alcoholic~~  
5 ~~beverages, except fermented beverages such as wine, beer, cider~~  
6 ~~and ale;~~

7 ~~(2)~~] B. "beer" means [~~any~~] an alcoholic beverage  
8 obtained by the fermentation of any infusion or decoction of  
9 barley, malt and hops or other cereals in water and includes  
10 porter, beer, ale and stout;

11 [~~(3)~~] C. "cider" means an alcoholic beverage made  
12 from the normal alcoholic fermentation of the juice of sound,  
13 ripe apples that contains not less than one-half of one percent  
14 of alcohol by volume and not more than seven percent of alcohol  
15 by volume;

16 [~~(4)~~] "~~fortified wine~~" means ~~wine containing~~  
17 ~~more than fourteen percent alcohol by volume when bottled or~~  
18 ~~packaged by the manufacturer, but does not include:~~

19 ~~(a) wine that is sealed or capped by~~  
20 ~~cork closure and aged two years or more;~~

21 ~~(b) wine that contains more than~~  
22 ~~fourteen percent alcohol by volume solely as a result of the~~  
23 ~~natural fermentation process and has not been produced with the~~  
24 ~~addition of wine spirits, brandy or alcohol; or~~

25 ~~(c) vermouth and sherry; and~~

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1                   ~~(5) "wine" includes the words "fruit juices"~~  
2                   ~~and means alcoholic beverages, other than cider, obtained by~~  
3                   ~~the fermentation of the natural sugar contained in fruit or~~  
4                   ~~other agricultural products, with or without the addition of~~  
5                   ~~sugar or other products, that do not contain less than one-half~~  
6                   ~~of one percent nor more than twenty-one percent alcohol by~~  
7                   ~~volume;~~

8                   ~~B.]~~ D. "department" means the taxation and revenue  
9                   department, the secretary of taxation and revenue or any  
10                  employee of the department exercising authority lawfully  
11                  delegated to that employee by the secretary;

12                  E. "fortified wine" means wine containing more than  
13                  fourteen percent alcohol by volume when bottled or packaged by  
14                  the manufacturer, but "fortified wine" does not include:

15                         (1) wine that is sealed or capped by cork  
16                         closure and aged two years or more;

17                         (2) wine that contains more than fourteen  
18                         percent alcohol by volume solely as a result of the natural  
19                         fermentation process and that has not been produced with the  
20                         addition of wine spirits, brandy or alcohol; or

21                         (3) vermouth and sherry;

22                   ~~[C.]~~ F. "microbrewer" means ~~[any]~~ a person who  
23                   produces fewer than five thousand barrels of beer in a year;

24                   ~~[D.]~~ G. "person" ~~[means any individual, estate,~~  
25                   ~~trust, receiver, cooperative association, club, corporation,~~

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1 ~~company, firm, partnership, joint venture, syndicate or other~~  
2 ~~association; "person" also means~~ includes, to the extent  
3 permitted by law, [~~any~~] a federal, state or other governmental  
4 unit or subdivision or an agency, department, institution or  
5 instrumentality thereof;

6 [E.] H. "small [~~winer or~~] winegrower" means [~~any~~  
7 person] a winegrower who produces fewer than [~~five hundred~~  
8 sixty] nine hundred fifty thousand liters of wine in a year;  
9 [and

10 [F.] I. "spirituous liquor" means alcoholic  
11 beverages, except fermented beverages such as wine, beer, cider  
12 and ale;

13 J. "wholesaler" means [~~any~~] a person holding a  
14 license issued under Section 60-6A-1 NMSA 1978 or [~~any~~] a  
15 person selling alcoholic beverages that were not purchased from  
16 a person holding a license issued under Section 60-6A-1 NMSA  
17 1978;

18 K. "wine" means an alcoholic beverage other than  
19 cider that is obtained by the fermentation of the natural sugar  
20 contained in fruit or other agricultural products, with or  
21 without the addition of sugar or other products, and that does  
22 not contain more than twenty-one percent alcohol by volume; and

23 L. "winegrower" means a person licensed pursuant to  
24 Section 60-6A-11 NMSA 1978."

25 Section 2. Section 7-17-5 NMSA 1978 (being Laws 1993,

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1 Chapter 65, Section 8, as amended) is amended to read:

2 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--

3 A. There is imposed on ~~[any]~~ a wholesaler who sells  
4 alcoholic beverages on which the tax imposed by this section  
5 has not been paid an excise tax, to be referred to as the  
6 "liquor excise tax", at the following rates on alcoholic  
7 beverages sold:

8 ~~[A.]~~ (1) on spirituous liquors, one dollar  
9 sixty cents (\$1.60) per liter;

10 ~~[B.]~~ (2) on beer, except as provided in  
11 ~~[Subsection E]~~ Paragraph (5) of this ~~[section]~~ subsection,  
12 forty-one cents (\$.41) per gallon;

13 ~~[C.]~~ (3) on wine, except as provided in  
14 ~~[Subsections D and F]~~ Paragraphs (4) and (6) of this ~~[section]~~  
15 subsection, forty-five cents (\$.45) per liter;

16 ~~[D.]~~ (4) on fortified wine, one dollar fifty  
17 cents (\$1.50) per liter;

18 ~~[E.]~~ (5) on beer manufactured or produced by a  
19 microbrewer and sold in this state, provided that proof is  
20 furnished to the department that the beer was manufactured or  
21 produced by a microbrewer, eight cents (\$.08) per gallon;

22 ~~[F.]~~ (6) on wine manufactured or produced by a  
23 small ~~[winer or]~~ winegrower and sold in this state, provided  
24 that proof is furnished to the department that the wine was  
25 manufactured or produced by a small ~~[winer or]~~ winegrower, ten

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1 cents (\$.10) per liter on the first eighty thousand liters sold  
2 and twenty cents (\$.20) per liter on all liters sold over  
3 eighty thousand liters but less than [~~five hundred sixty~~] nine  
4 hundred fifty thousand liters; and

5 [~~6-~~] (7) on cider, forty-one cents (\$.41) per  
6 gallon.

7 B. The volume of wine transferred from one  
8 winegrower to another winegrower for processing, bottling or  
9 storage and subsequent return to the transferor shall be  
10 excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable  
11 volume of wine of the transferee. Wine transferred from an  
12 initial winegrower to a second winegrower remains a tax  
13 liability of the transferor, provided that if the wine is  
14 transferred to the transferee for the transferee's use or for  
15 resale, the transferee then assumes the liability for the tax  
16 due pursuant to this section.

17 C. A transfer of wine from a winegrower to a  
18 wholesaler for distribution of the wine transfers the liability  
19 for payment of the liquor excise tax to the wholesaler upon the  
20 sale of the wine by the wholesaler."

21 Section 3. Section 7-17-6 NMSA 1978 (being Laws 1984,  
22 Chapter 85, Section 4, as amended) is amended to read:

23 "7-17-6. DEDUCTION--INTERSTATE SALES--WINEGROWER-TO-  
24 WINEGROWER TRANSFERS.--

25 A. A wholesaler may deduct the liters of spirituous

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1 liquors, gallons of beer and liters of wine sold and shipped to  
2 a person in another state from the units of alcoholic beverages  
3 subject to the tax imposed by the Liquor Excise Tax Act;  
4 provided that the department may require the wholesaler to  
5 submit evidence satisfactory to the department that the units  
6 have been sold and shipped to a person in another state.

7 B. A winegrower may deduct the liters of wine  
8 transferred to the winegrower from another winegrower for  
9 processing, bottling or storage and subsequent return to the  
10 transferor from the units of wine subject to the liquor excise  
11 tax on the licensed premises of the winegrower."

12 Section 4. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2008.

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